

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Docket No.: Z-19-23

Applicant: William L. Goldman, Jr., Esq.
860 Pebble Hill Road
Doylestown, PA18901

Owners: William L. Goldman, Jr., Esq. & Lynn B. Goldman
860 Pebble Hill Road
Doylestown, PA18901

Subject Property: Tax Parcel No. 09-026-099, which is located at the address of the Applicant set forth above.

Requested Relief: Applicant seeks authorization to use an accessory family apartment constructed within a new garage structure. An accessory family apartment is permitted within the R-1 Residential Zoning District of Doylestown Township by special exception, pursuant to §175-37.B of the Doylestown Township Zoning Ordinance ("Ordinance"). Applicant seeks a special exception accordingly. In addition, Applicant seeks a variance from the specific requirement within the definition of Accessory Family Apartment, contained at §175-16.H(12)(b) which permits Accessory Family Apartments only within the principal dwelling or within an existing garage.

Hearing History: The application was filed in Doylestown Township on November 8, 2023. The hearing was held on December 18, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant, *Pro Se*

Mailing Date: February 1, 2024

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Applicant is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the R-1, Residential Zoning District of Doylestown Township. The lot area is 5.379 acres. The property accommodates the Applicant's single-family dwelling with usual and customary improvements.

4. Applicant seeks authorization to use an accessory family apartment constructed within a new garage structure. An accessory family apartment is permitted within the R-1 Residential Zoning District of Doylestown Township by special exception, pursuant to §175-37.B of the Doylestown Township Zoning Ordinance ("Ordinance").

5. Applicant seeks a special exception accordingly. In addition, Applicant seeks a variance from the specific requirement within the definition of Accessory Family Apartment, contained at §175-16.H(12)(b) which permits Accessory Family Apartments only within the principal dwelling or within an existing garage.

6. A special exception is defined under the Doylestown Township Zoning Ordinance as, "A permission or approval granted to use land for a purpose other than those specified as uses permitted outright within a zoning district, granted by the Township Zoning Hearing Board in accordance with the standards contained in this chapter." See, Ordinance §175-9.

7. §912.1 of the Municipalities Planning Code ("MPC") provides for the Zoning Hearing Board to hear requests for special exceptions "to be granted or denied by the board pursuant to express standards and criteria ... [permitting] the board [to] attach such reasonable conditions and safeguards... as it may deem necessary ..." See, §912.1 of the MPC.

8. §175-137 and §175-138 similarly provide standards and criteria for the granting of special exceptions.

9. §175-37 B H-12 provides that the accessory family apartment is permitted by special exception.

10. The provisions of the Ordinance defining an accessory family apartment are found at §175-16.H(12), and read as follows:

H-12. Accessory family apartment. One accessory dwelling unit to a single-family detached dwelling shall be permitted as a residence by family members or a family caregiver, provided that

the conditions set forth in this section are met, and further provided that the accessory use, in all respects, complies with this chapter relating to the zoning district wherein the proposed accessory dwelling unit is to be constructed or to be used.

[Added 5-4-1993 by Ord. No. 224; amended 2-16-2021 by Ord. No. 401]

- (a) The accessory family apartment shall occupy no more than 25% of the total usable floor area of the principal residence, not including any garage.
- (b) Accessory family apartments shall be part of the principal residence or may be contained in the existing accessory structure such as a garage.
- (c) The required off-street parking for the principal dwelling plus one additional off-street parking space for the accessory family apartment shall be provided.
- (d) There shall be no changes to the exterior of the residence which suggests that the dwelling unit is other than a single-family dwelling or which would otherwise detract from the single-family character of the neighborhood. Manufactured homes, industrialized housing, recreational vehicles, travel trailers, and any other wheeled or transportable structure shall not be used as an accessory family apartment.
- (e) No more than one accessory family apartment shall be permitted per single-family detached dwelling.
- (f) A maximum of two occupants are permitted in such units. Accessory family apartment shall be occupied by family members or a family caregiver.
- (g) Each accessory family apartment shall be registered with the Township Zoning Officer, who shall keep a record of its use to ensure compliance with this chapter. A fee shall be imposed by the Township Board of Supervisors for the registration of said use, which said fee shall be fixed periodically by the Board of Supervisors by resolution. Registration of an accessory family apartment shall expire upon conveyance of the property, at which time the new property owner may reregister said use if warranted.
- (h) A certification shall be received from the Bucks County Board of Health or other regulatory agency certifying that the wastewater facilities are adequate to accommodate the single-

family dwelling as well as the accessory family apartment as defined in this subsection.

- (i) The record owner of the property shall grant a deed restriction limiting such use in accordance with the foregoing provisions in favor of the Township, which agreement shall contain the following provisions:

- [1] A description of the dimensions and location of accessory use.

- [2] Being in a recordable document acceptable to the Township for filing with the Bucks County Recorder of Deeds Office. All costs for the preparation and recording of the foregoing document are the responsibility of the applicant for the accessory use.

- [3] The rental of an accessory family apartment shall not be permitted, nor shall it be used in any way as an income property.

11. Applicant offered testimony satisfying each of the specific and general criteria for the accessory family apartment, except §175-16.H(12)(b).

12. No one spoke in opposition to the application.

13. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used consistent with the requirements of the Ordinance.

2. §175-37 provides that Use H12 accessory family apartment is permitted within the R-1 Zoning District by special exception. MPC §912.1 and Ordinance §175-137 and §175-138 provide the authority and general criteria for the special exception.

3. §175-16.H(12) provides the specific criteria for the accessory family apartment use.

4. The Board considers the provision of §175-16.H(12)(b) to be a dimensional variance as opposed to a use variance.

5. The Pennsylvania Supreme Court has articulated a relaxed variance standard for dimensional variances. See, *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 554 Pa. 249, 721 A.2d. 43 (1998).

6. The Board concludes that the Applicant has met the relaxed standard for a variance to permit the addition to the accessory structure to house the garage and accessory family apartment.

7. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested under the relaxed variance standard.

8. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be no negative impacts upon surrounding properties or uses.

9. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary.

10. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

11. The grant of the requested variances satisfies Appellant's burden to meet the objective criteria set forth in the Ordinance for a special exception. *New Bethlehem Borough Council v. McVay*, 78 Pa. Commw. 167, 467 A.2d 395 (Pa. Cmwlt. 1983). A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. *Kern v. Zoning Hearing Board of Tredyffrin Township*, 68 Pa. Commw. 396, 449 A.2d 781 (1982). Here, no objecting witnesses participated in the hearing to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community. *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwlt. 1989).

12. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-37.B and §175-16.H(12)(b) of the Doylestown Township Zoning Ordinance to permit Applicant authorization to use an accessory family apartment constructed within a new garage structure.

The relief herein granted is subject to the following conditions:

1. The in-law suite shall comply with §175-16 H-12 of the Ordinance.
2. Construction of the accessory structure shall be consistent with testimony provided by Applicant during the hearings held and further subject to the plans provided.
3. Applicant is to provide a post-construction “As-Built” Plan to confirm for Doylestown Township that the project was developed without need for additional zoning relief.
4. Applicant must comply with the Bucks County Board of Health regulations.
5. Applicant shall grant a deed restriction in accordance with §175-16(H)(12)(i).
6. Applicant must comply with all other applicable rules, regulations and governmental ordinances.

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**ZONING HEARING BOARD
OF DOYLESTOWN TOWNSHIP**

By: /s/ William J. Lahr
William J. Lahr, Chairman

/s/ Mitchell Aglow
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo
Samuel Costanzo, Secretary